

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA

v.

KIM DOTCOM, *et al.*,

Defendants

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Criminal No. 1:12CR3

**GOVERNMENT’S RESPONSE TO PUBLIC LETTER OF  
DECEMBER 9, 2013 FROM COUNSEL FOR NON-PARTY KYLE GOODWIN**

Despite this Court’s March 23, 2012 instruction that “any matter in need of the Court’s attention should be raised by formal motion,” counsel continue to improperly file letters seeking inappropriate relief. On December 9, 2013, the Electronic Frontier Foundation, counsel for Kyle Goodwin, publicly filed a letter asking this Court to ensure that Mr. Goodwin receives assistance from the government commensurate with victims of the offenses. (Dkt. 188.)

As an initial matter, the Electronic Frontier Foundation filed the December 9, 2013 letter prior to the unsealing of this Court’s November 22, 2013 Order. Now that the Order has been unsealed, it is clear that the Order did not define or narrow the class of victims but simply addressed how the government should protect victim rights and fulfill its victim notification obligations. As a member of the public, Mr. Goodwin now enjoys the same access as other members of the public to the government’s victim notification release at <http://www.justice.gov/usao/vae/megaupload.html>.

The government’s position with respect to Mr. Goodwin has consistently been that he has yet to demonstrate an interest in any property seized by the government, *see* Brief of the United States Regarding the Breadth and Format of a Hearing to Determine the Applicability of Federal

Rule of Criminal Procedure 41(g) at 2, (Oct. 30, 2012) (Dkt. 136), and that he is not a direct victim of the defendants’ criminal conduct as charged in the Superseding Indictment. During the June 29, 2012 hearing on Mr. Goodwin’s motion for the return of property, when asked by this Court whether Mr. Goodwin “is not alleging that his data has been unlawfully infringed, right? He is not like the motion picture industry?” the government agreed, responding that “in our view though, he is at minimum an unsecured creditor of the business.” Transcript of June 29, 2012 Hearing at 39:1–10 (Dkt. 116). And Mr. Goodwin may exercise his potential rights as an unsecured creditor during the post-conviction forfeiture and restitution proceedings. *Id.* at 40:2–9; *see also* Response of the United States to Non-Party Kyle Goodwin’s Motion for the Return of Property Pursuant to 18 U.S.C. § 1963 or Federal Rule of Criminal Procedure 41(g) at 6, (June 8, 2012) (Dkt. 99).

Mr. Goodwin is simply not entitled to the immediate and unprecedented relief sought by his counsel. The United States therefore respectfully requests that the Court deny the relief requested in the December 9, 2013 letter submitted by the Electronic Frontier Foundation on behalf of Mr. Goodwin. (Dkt. 188.)

Respectfully submitted,

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Acting United States Attorney

Date: December 20, 2013

By: /s/  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the December 20, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF, which will then send a notification of such filing (NEF) to:

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